CASES

ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF LOUISIANA.

EASTERN DISTRICT, JANUARY TERM, 1819.

East'n District. *January* 1819.

JOHNSON vs. DUNWOODY.

JOHNSON vs. *DUNWOODY.*

No action can be brought in the court of the parish and city of New-Orleans on a judgment rendered in the territory of Alabama.

APPEAL from the court of the parish and city of New-Orleans.

MARTIN, J. delivered the opinion of the court. This case has been submitted to us without argument. It is an action originally brought in the court of the parish and city of New-Orleans, to recover the balance of a judgment obtained by the plaintiff against the defendant, in the territory of Alabama, in consequence of an assault on the former, in the town of Mobile.

It appears to us, that the plaintiff mistook his remedy, in suing in the parish court, whose jurisdiction extends only to *civil cases originat-*

East'n District. *January* 1819.

JOHNSON. vs. DUNWOODY.

ing in the said parish. Les affaires civiles qui prendront naissance dans les limites de ladite paroisse, 1813, *c.* 25, § 1.

The parish court was without jurisdiction, and all its proceedings in this case are *coram non judice.*

It is, therefore ordered, adjudged and decreed that the judgment be annulled, avoided and reversed—that the suit be dismissed and the plaintiff and appellee pay costs in this and the parish court.

Morel for the plaintiff, *Johnson* for the defendant.

POEYFARRE vs. *DELOR.*

A sale under private signature is binding, although it recites the intention of the parties to have a notarial act executed.

APPEAL from the court of the parish and city of New Orleans.

DERBIGNY, J. delivered the opinion of the court. The parties have reduced to writing a certain agreement, by which the defendant declares *to have sold* to the plaintiff a house and lot of ground for a fixed price. But as they have mentioned something of another instrument to be executed, the defendant contends that the present one is not a complete sale, inasmuch as the parties had in contemplation some further

act, without which the contract cannot be considered as perfect.—He has even gone so far as to maintain that the writing, in which the defendant declares *to have sold* the premises, amounts to nothing more than a promise that *he will sell* them.

We think, however, that the act under private signature, now before us, contains a complete and perfect sale, and that the parties, by expressing an intention to execute another act, evidently alluded to that kind of instrument, which, by giving authenticity to the sale, has effect against third persons.—But this was altogether for the advantage and safety of the plaintiff. If he chose to wave it he could do so, and abide by the consequences. The contract, as between the parties, was consummated, and the omission of the further execution of the public act could not affect it.

The plaintiff has offered to perform, or rather has performed the conditions which he had agreed to. He has tendered the price and the mortgage stipulated by the defendant: he is entitled to the possession of the property bought.

The objection of the defendant to the endorser of the notes tendered is one that he certainly had a right to make. But when brought before a court of justice to be compelled to yield the

East'n District. *January* 1819.

POEYFARRE vs. DELOR.

possession demanded, it was his duty to support that allegation by proof. Having not done this, the objection must be disregarded.

It is therefore ordered, adjudged and decreed that the judgment of the parish court be affirmed with costs.

Duncan for the plaintiff, *Grymes* for the defendant.

SMITH vs. *FLOWERS & AL.*

A consignee who receives the goods, is liable for the freight.

APPEAL from the court of the parish and city of New-Orleans.

DERBIGNY, J. delivered the opinon of the court.* The plaintiff and appellee, has brought to New-Orleans forty hogsheads of tobacco, consigned to the defendants. They received it, and refused to pay freight.—Being sued by the carrier, they answer:

That they are not liable to be sued in their capacity of consignees;

That the tobacco was damaged by the plantiff.

In support of their first plea, they contend that,

---

* MATHEWS, J. did not join in this opinion, being related by affinity to one of the defendants.

this being a demand founded on a contract entered into in Kentucky, the original parties alone can be called upon to perform it. They further offered to plead, that the case having originated out of the limits of the parish of New-Orleans, that court has no jurisdiction over it.

The answer to both these positions is, that, by taking the tobacco, the defendants impliedly contracted the obligation to pay the freight of it; and this is the obligation on which they are sued.

As to the damage complained of, the plaintiff has satisfactorily proved that it did not happen while the tobacco was under his care. He even went further than there was occasion for, by shewing that it was done, while the tobacco was in the store out of which he received it.

It is, therefore ordered, adjudged and decreed thal the judgment of the parish court be affirmed with costs.

Carleton for the plaintiff, *Hennen* for the defendant.

East'n District.
January 1819.

HANNIE
vs.
BROWDER.

The wife's property, not constituted in dot, is paraphernal and she has a mortgage on her husband's property, if he dispose of it.

HANNIE vs. *BROWDER.*

APPEAL from the court of the third district.

MARTIN, J. delivered the opinion of the court. The plaintiff in the life time of her husband, instituted a suit against him, for a separation of goods and the restitution of her property in his hands. He died before the termination of the suit, and the plaintiff made the present defendant, curator of his vacant estate, a party She proved that she married without any constitution of dot or dowry, and that her husband had received and sold two slaves, bequeathed to her, before the marriage, and that he had also received, from the executors of her father, the sum of $ 11,757, part of a larger sum, also bequeathed to her. The district court gave judgment for her to the amount of $ 11,200—with privilege on the sum of $ 1200—she appealed.

The defendant having offered his accounts for approbation to the court of probates, the plaintiff intervened and insisted on being placed, as a privileged creditor, for the whole amount of her judgment. The court of probates ranked her according to the judgment of the district court. She appealed from this decision to the district court, by which it was confirmed. From this latter decision she appealed to this court and both

appeals are now before us and have been heard together.

This court is of opinion that the district court and the court of probates erred. The property of the wife was paraphernal, since it was not constituted in dot or dowry. *Civil Code* 327, *art.* 19, 329, *art.* 12 and 13. For her paraphernal property, disposed by the husband the wife has a mortgage on his estate. *Id.* 339, *art.* 62.

The plaintiff's original suit for separation and restitution of her property, could not be renewed against the curator of his estate, *quoad* the separation, but it might *quoad* the restitution.

It is therefore, ordered, adjudged and decreed that both the judgments of the district court be annulled, avoided and reversed: and this court proceeding to render such judgment, as in its opinion, ought so have been given, doth order, adjudge and decree that the plaintiff do recover from the defendant, as curator of the estate of her husband, the sum of eleven thousand and two hundred dollars with interest, at the rate of five per cent. from the date of the judicial demand, as a mortgage debt on the estate: the plaintiff having waved her right to the difference, between the sum of $ 117,57 in the statement of facts and $ 10,000 in the judgment. And it is further ordered, adjuged and decreed that the decision of the court of probates be annulled, avoided

East'n District. *January* 1819.

HANNIE *vs.* BROWDER.

and reversed, and that the plaintiff be classed for the said sum, as a mortgage creditor of the estate and that the defendant pay costs in the court of probates, the district and this court.

C. Baldwin for the plaintiff, *Workman* for the defendant.

METAYER vs. *METAYER.*

A slave, who enjoyed her freedom, in Hispaniola during the late revolution, may reckon that time in establishing her right to freedom, by prescription

APPEAL from the court of the parish and city of New-Orleans.

DERBIGNY, J. delivered the opinion of the court. The defendant, Adelaide Metayer, a woman of colour, is in possession of her freedom, since a number of years. A person, who calls himself her master, now sues to make her return to the state of slavery.

It was at first doubted, whether the plaintiff had proved himself to be the same individual, whom the witnesses call the only son and heir of Charles Metayer of Cape François, who was the master of the defendant, when the revolution of Hispaniola broke out. But, after an attentive perusal of the record, it is now believed, that the plaintiff is sufficiently identified with Metayer's son.

The defendant pleads, in general terms, that she is free.—She has failed in a former suit,

where she was plaintiff in damages for false imprisonment, *Metayer* vs. *Noret*, 5 *Martin*, 566, to prove her freedom by emancipation under her master's hand; but the evidence, in the present case, shews that she was in Hispaniola when the general emancipation was proclaimed by the commissioners of the French government, and remained there until after the evacuation of the island by the French in 1803, a period of about ten years. It is further proved, that she continued in the enjoyment of her freedom, without interruption until 1816; so that she has lived as a free person during twenty-three years, that is to say, three years more than the time required by law for a slave to acquire his freedom, by prescription in the absence of his master.

The plaintiff objects that the time during which the defendant remained in Hispaniola, ought not to be included in this calculation, because the abolition of slavery in that island was an act of violence, and that prescription does not run against those who have been so dispossessed, so long as they are prevented from claiming their property; according to the maxim: *contra non valentem agere nulla currit prescriptio.* But the plaintiff cannot avail himself of this exception, without admitting, at the same time, that the government of Hispaniola, during its divers revolutions, continued to countenance the general eman-

East'n District. *January* 1819.

METAYER vs. METAYER.

cipation; and then, instead of the simple fact of possession, the right of the defendant to her freedom by law would be the consequence: for if the abolition of slavery by the commissioners of the French republic has been maintained by the successive governments of the island, no foreign court will presume to pronounce that unlawful which, through a course of political events, has been sanctioned by the supreme authority of the country.

Therefore, without entering into this very delicate subject any further than the present case makes it strictly necessary, we are bound to say, at least, that, by virtue of the general emancipation, the defendant enjoyed her freedom in fact, no matter under what modification, and that the years which she passed at Cape François, in that situation, must be included in the time during which she did not live in a state of slavery; which time, at the lowest calculation, exceeds that which is required by law for a slave to prescribe his freedom in the absence of his master.

It is, therefore ordered, adjudged and decreed that the judgement of the parish court be affirmed with costs.

Moreau for the plaintiff, *Morel* for the defendant.